



HOUSE BILL 237: 2012 Workers' Compensation Amendments

2011-2012 General Assembly

Committee:	Senate Commerce	Date:	June 6, 2012
Introduced by:	Reps. Dollar, Rhyne, McElraft, Folwell	Prepared by:	Phyllis Pickett
Analysis of:	PCS to First Edition H237-CSLRf-28		Staff Attorney and Kory Goldsmith Committee Counsel

SUMMARY: *The Proposed Committee Substitute completely rewrites HB237. The PCS would amend the laws related to information that may be shared by the North Carolina Rate Bureau with the North Carolina Industrial Commission. It also makes a number of clarifying and other changes to Chapter 97 of the General Statutes (the Workers' Compensation Act).*

The act would be effective when it becomes law and applies to claims filed on or after that date.

BILL ANALYSIS:

Section 1(a) amends G.S. 58-36-16.

Current law: – the North Carolina Rate Bureau (Rate Bureau) must provide information to the Department of Labor (DOL) regarding an employer's experience rate modifier established for the purpose of setting premium rates for workers' compensation insurance as well as the name and business address of each employer whose workers' compensation coverage is provided through the assigned-risk pool under G.S. 58-36-1. The information is confidential in the hands of the DOL and is not open for public inspection. The Rate Bureau is immune from civil liability for releasing the information, even if the information is erroneous as long as the Rate Bureau acted in good faith and without malicious or willful intent to harm.

Bill Analysis: – the PCS requires the Rate Bureau to provide the same information to the North Carolina Industrial Commission (Commission), extends to same protections against disclosure for the information received by the Commission, and grants the same immunities to the Rate Bureau.

Section 1(b) enacts a new statute that requires the Rate Bureau to provide the Commission with information indicating the status of workers' compensation insurance coverage on North Carolina employers as reported to the Bureau by the Bureau's member companies. The Commission must obtain any software or software licenses necessary to receive and process the information from the Bureau. The information will be confidential and not a public record. The Commission is restricted to using the information only for the purpose of carrying out its statutory duties. The Rate Bureau would be immune from civil liability for releasing the information if it acted in good faith and without malicious or willful intent, even if the information is erroneous.

Section 2 makes a number of changes to G.S. 97-25.6 regarding an employer's access to an employee's medical information. The clarifying and substantive changes are as follows:

Current law: An employer may request medical records, information not contained in the medical records, and oral communications to obtain information not contained in the medical records or not available through written communication. The employer must provide contemporaneous written notice to the employee of requests for medical records and must also provide the employee with a copy of the records received from the health care provider.

Bill Analysis: Under the PCS, an employer would have to provide the employee with a copy of the records or written response, but only if the employee requests copies of the same.

House PCS 237

Page 2

Current law: An employer may request certain additional information from the employee's health care provider without first obtaining the employee's consent. The additional information that may be requested includes a diagnosis of the employee's condition, the appropriate course of treatment, when the employee will be able to return to work, the relationship of the employee's condition to the employment and any work restrictions resulting from the condition.

Bill Analysis: Under the PCS, an employer could request information concerning whether the employee is able to return to the employee's employment based upon the employee's job description.

Current law: An employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's health care provider. The employer must first notify the employee in writing and the employee has 10 business days to either consent or object to the employer's proposed communication. If the employee objects, the employee may request a protective order from the Commission.

Bill Analysis: Under the PCS, if the employee does not seek a protective order within the specified 10 business days, the employer may submit the additional information directly to the health care provider.

Current law: G.S. 97-25.6(g) allows additional forms of communication, but only as authorized by the Commission.

Bill Analysis: Under the PCS, additional forms of communication may be used by agreement of the parties or by a voluntary authorization signed by the employee. The Commission may also adopt rules authorizing other forms of discovery.

Section 3 relates to the rule making process by which the Commission can set the fees to be paid by insurers for both medical care and hospital care. The current law provides a process that differs from the standard process under the Administrative Procedures Act (APA). The PCS would require the Commission to use the standard process.

Section 4 authorizes the Commission to set a fee to compensate a health care provider for the time spent communicating with the employer or the employee.

Section 5 amends G.S. 97-27(b) to provide that in cases where an employee is dissatisfied with the percentage of permanent disability provided under G.S. 97-31, any travel expenses incurred by an employee to obtain another examination shall be paid by the employee.

Section 6 amends G.S. 97-29(b) which determines when an employee qualifies for temporary total disability.

Current law: G.S. 97-29(b) provides that an employee qualifies for temporary total disability when a claim is compensable because the employer admits to the employee's right to compensation (G.S. 97-18(b)), is paid without prejudice because the employer is uncertain whether the claim is compensable (G.S. 97-18(d)), is agreed by the parties (G.S. 97-82), or when the employee proves by a preponderance of the evidence that the employee is no longer able to earn the same wages that the employee earned before the injury (in the same or other employment).

Bill Analysis: under the PCS, the incapacity may be established when a claim is deemed compensable by the Commission following a hearing under G.S. 97-84.

Section 7 amends G.S. 97-32.2 which establishes the requirements for vocational rehabilitation services. The PCS would exclude these services if the employee is receiving extended compensation in excess of the 500 week limitation for temporary total disability or if the employee qualifies for permanent total disability.

H237-SMRC-68(CSLRf-28) v3